UNITED PLYWOOD AND SAWMILL LTD. v. LOCK NGAN LOI

[F.C. (Ong C.J. (Malaya), Gill F.J. and Ong Hock Sim J.) July 23, 1970]

[Malacca — Federal Court Civil Appeal No. 15 of 1970]

Damages — Negligence — Loss of arm — Discernible trend of awards — When appellate court will interfere.

This was an appeal against the award by the High Court of a sum of $35,000 in respect of a claim by the respondent for the loss of her arm as a result of personal injuries sustained by her due to the negligence and/or breach of statutory duty on the part of the appellants, their servants or agents in failing to provide a safe system of work. It was contended that the award was considerably in excess of any discernible trend of awards made in cases involving similar injuries to persons of similar education and earning capacity and was manifestly excessive.

Held, allowing the appeal: (1) an appellate court can only interfere with an assessment if it is considered inordinately low or inordinately high or if it is so much out if line with the discernible trend or pattern of awards in reasonably comparable cases that it might be regarded as a wholly erroneous estimate;

(2) in this case the award was inordinately high and manifestly excessive and the award should be reduced to $27,500.

Cases referred to:-

(1) *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] M.L.J. 29.

(2) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 63.

(3) *I.R.K. Tandon* v. *Ng Siok Kwee & Anor.* [1964] M.L.J. xlv.

(4) *Ng Kay Thong* v. *Chan Shon Shong* [1966] 2 M.L.J. 305.

(5) *Lew Fa* v. *Seng Chong Metal Works Ltd.* [1966] 1 M.L.J. 231.

(6) *Rajoo* v. *Anthony* [1970] 1 M.L.J. xv.

FEDERAL COURT.

Alexander Y. L. Lee for the appellants.

D. H. Murphy for the respondent.

Gill F.J.: This is an appeal by the defendants in the action against an award by Abdul Hamid J. of a sum of $35,000 as general damages in respect of a claim by the respondent as plaintiff for the loss of her arm as a result of personal injuries sustained by her due to the negligence and/or breach of statutory duty on the part of the defendants, their servants or agents in failing to provide a safe system of work.

The first two grounds of appeal are to the effect that in making the award the learned trial judge was wrong in considering and taking into account the damages awarded in a number of cases for the loss of a leg. In my opinion, these two grounds do not call for any consideration for the simple reason that there is nothing in the grounds of judgment of the learned trial judge to indicate that he allowed himself to be unduly influenced either by the argument by counsel for the plaintiff that damages awarded for the loss of an arm should be higher than those for the loss of a leg or by the amounts awarded for the loss of a leg in the cases cited to him.

The principle on which the learned trial judge based his award is set out in his judgment as follows: —

> "In my opinion the award made should be in line with the trend or pattern of awards in reasonably comparable cases. However, in considering these cases the court has to examine whether they are reasonably comparable to the case in hand. It is necessary to examine the facts of each of these cases and compare them with the facts of the case under consideration. The distinguishing factors in each of these cases should be borne in mind when considering the proper award to be made."

The major ground of appeal here is that the award made was considerably in excess of any discernible trend of awards made in cases involving similar injuries to persons of similar education and earning capacity and was manifestly excessive. The sole question for determination in this appeal, therefore, is whether the amount awarded to the plaintiff in this case is in line with the general run of assessments in reasonably comparable cases.

In expressing his opinion for the basis of his award the learned trial judge was clearly following what was said by the Court of Appeal in *Pahang Lin Siong Motor Co., Ltd. & Anor* v. *Cheong Swee Khai & Anor*(1) and by the Privy Council in *Jag Singh* v. *Toong Fong Omnibus Co., Ltd.*(2) It would therefore be appropriate to treat the first of those two cases as the starting point in an investigation for the purpose of achieving some measure of uniformity in awarding damages for the loss of an arm. The plaintiff in that case sustained serious crushing injury to his right arm which had to be amputated. At the time of the accident he was about 20 years old and he earned about $120 a month as a rubber tapper. The trial court awarded $25,000 as general damages, and this award was upheld by the Court of Appeal. The case of *Jag Singh* v. *Toong Fong Omnibus Co., Ltd.*(2) is not strictly relevant to this appeal because that was a case in which the plaintiff, a school boy aged 7 years, had lost his leg, but it is pertinent to note that the general damages there were increased by the Privy Council from $15,000 to $25,000.

As regards later cases involving the loss of an arm, the amount awarded in *I. R. K. Tandon* v. *Ng Siok Kwee & Anor*(3) was $26,500. The plaintiff in that case was a clerk earning $180 a month, and although he continued in the same employment at the same salary after his injuries the amount awarded to him included the loss of his promotion prospects and, to some extent, his future earning power. In *Ng Kay Thong* v. *Chan Shon Shong*(4) the plaintiff was 42 years old at the time of the accident and was working as a bill collector, rent collector and sub-contractor for his brother who was the proprietor of a construction company. Abdul Aziz J. gave him $22,500 as general damages. In *Lew Fa* v. *Seng Chong Metal Works Ltd.*,(5) however, the same judge awarded $43,000 to a plaintiff who was 19 years of age and was engaged to operate a machine called a "press brake" for the making of window frames. An appeal by the employer against liability was dismissed, but the Court of Appeal expressed the view that the award was an extremely generous one. There is one other case to which I need refer, as it was heard by the same judge as the judge in the present case. That is the case of *Rajoo* v. *Anthony*(6) in which the plaintiff was 22 years of age and worked as an unskilled labourer at the Sikamat

Camp earning $120 a month. He was awarded $38,000.

As has been said again and again, the assessment of damages in cases of personal injury is one of the most difficult things for either a judge in the first instance or a Court of Appeal. When a man has lost his arm there is no sum in the world that can in the true sense compensate for it. Yet compensation in the form of money is the only way in which he can be granted redress for the injury he has suffered. It is neither possible nor desirable for damages for the loss of an arm to be standardised or rigidly classified, as no two cases are ever alike. But in order to maintain some semblance of uniformity, the amounts awarded in past cases, which bear reasonable comparison with the case under review, should serve as a useful guide. The general principle is that an appellate court can only interfere with an assessment if it is considered so inordinately low or inordinately high as to make the court exclaim, "Good gracious, is that the sum which has been awarded — that sum must be altered", or if it is so much out of line with the discernible trend or pattern of awards in reasonably comparable cases that it must be regarded as a wholly erroneous estimate.

Of all the cases that I have considered above, the one case which bears the most reasonable comparison with the present case is the case of *Pahang Lin Siong Motor Co., Ltd. & Anor*,[1] both from the point of view of the ages and the earning capacities of the plaintiffs in the two cases. In applying the principles which I have stated above to the award in the present case, I cannot help thinking that it is inordinately high or manifestly excessive. Allowing for the extent to which money values have depreciated since the *Pahang Lin Siong* case[1] was decided, I would consider a sum of $27,500 as a suitable award in the present case. I would therefore allow this appeal with costs and substitute that sum in place of the amount awarded by the trial judge.

Ong C.J.: I agree with the judgment just delivered by Gill F.J. and would add only a few words. This court normally does not interfere with an assessment of damages even where the award seemed much too high, so long as there has not been any error of principle discerned in the judgment or the sum manifestly excessive. In course of time, however, a generous award left undisturbed becomes treated as a norm and progressively the amount rises in subsequent cases. The erosion process has to be arrested from time to time and this case in my opinion is one where we must step in to do so.

Ong Hock Sim J.: I have had the advantage of reading the judgment of Gill F.J. and also the judgment of Ong C.J. with which I am fully in agreement.

I need hardly say that it is desirable that the Federal Court should enunciate certain principles upon which the difficult problem of assessing damages in cases of personal injury can be resolved so that undue disparity in the amount of damages awarded in almost identical cases can be avoided.

Appeal allowed.

Solicitors: *Skrine & Co.; Murphy & Dunbar.*

JULIA EU KEE POH v. CHAIRMAN OF TOWN BOARD OF PETALING JAYA

[A.C.J. (Abdul Hamid J.) July 23, 1970]

[Kuala Lumpur — Originating Motion No. 6 of 1970]

Rating — Annual value — "Holdings" which is "vacant" or "unoccupied" or only partially built upon — Basis of assessment — Town Boards Enactment (Cap. 137), s. 44.

This was an appeal against assessment in respect of a rubber estate. The respondent had assessed the land at one-tenth of the improved value thereof on the basis that the land was vacant and unoccupied.

Held: (1) occupation is a question of fact depending on the circumstances of each case. In the circumstances of this case although the agent of the appellant was looking after and managing the estate, it was essentially for purposes of ensuring that tapping was done properly and to arrange the sale of rubber. There was no building on the land and in the circumstances it was evident that the land was not in actual fact occupied;

(2) as the land had no buildings on it it was a vacant holding within the meaning of the Town Boards Enactment;

(3) having found that the land was vacant and unoccupied, the respondent had the right to exercise the option to assess either on the estimated gross annual rent at which the holding might reasonably by expected to be let from year to year or on one-tenth of the improved value thereof.

Cases referred to:-

(1) *Lee Wah Bank Ltd.* v. *Commissioners of Federal Capital of Kuala Lumpur* [1962] M.L.J. 23.

(2) *Kent C.C.* v. *Gerald* [1897] A.C. 639.

CIVIL APPEAL.

Alex Lee (*Thayalan* with him) for the appellant.

Raja Abdul Aziz for the respondent.

Abdul Hamid J.: This appeal is brought under section 44 of the Town Boards Enactment (F.M.S. Cap. 137). The appellant is the registered proprietor of land comprised under certificate of title No. 26570 Lot No. 6183 which is a rubber estate managed by an agent for and on behalf of the appellant. The estate is let for tapping to two tappers and a *kepala*. No one lives on the estate.

The annual value of the said land was assessed for the first time at $42,720 on the basis of 1/10th of the improved value for rating purposes. The Town Board, Petaling Jaya gave notice of valuation on 15th November, 1969. Objection was lodged by the appellant's solicitors on 19th November, 1969 and the objection was rejected. At the commencement of the hearing counsel agreed that the court should first dispose of the only issue of law which arises in this appeal.

It is contended that no annual value should be assessed at all or alternatively that the land should be assessed on the basis of estimated gross annual rent at which the holding might reasonably be let from year to year on the ground that the said land was not vacant or unoccupied or only partially built upon.

Counsel for the appellant has not put forward any ground in support of his contention that no annual value should be assessed. To my mind it can hardly be denied that the board is empowered to assess the annual value. The question that calls for determina-